

# House File 2046 - Introduced

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BY JACOBY

## A BILL FOR

1 An Act relating to the collection of sales and use taxes by  
2 certain out-of-state retailers, and including effective date  
3 provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 423.1, subsection 48, paragraph a, Code  
2 2018, is amended to read as follows:

3 a. *"Retailer maintaining a place of business in this state"*  
4 or any like term includes any of the following:

5 (1) A retailer having or maintaining within this state,  
6 directly or by a subsidiary, an office, distribution house,  
7 sales house, warehouse, or other place of business, or any  
8 representative operating within this state under the authority  
9 of the retailer or its subsidiary, irrespective of whether that  
10 place of business or representative is located here permanently  
11 or temporarily, or whether the retailer or subsidiary is  
12 admitted to do business within this state pursuant to chapter  
13 490.

14 (2) A retailer who does not satisfy the requirements of  
15 subparagraph (1) but who does satisfy either of the following  
16 requirements in the previous calendar year or the current  
17 calendar year:

18 (a) The retailer's gross revenue from the sale of tangible  
19 personal property or services delivered into Iowa exceeds one  
20 hundred thousand dollars.

21 (b) The retailer sells tangible personal property or  
22 services for delivery into Iowa in two hundred or more separate  
23 transactions.

24 Sec. 2. Section 423.1, subsection 48, paragraph b,  
25 subparagraph (1), unnumbered paragraph 1, Code 2018, is amended  
26 to read as follows:

27 A retailer shall be presumed to be maintaining a place of  
28 business in this state, ~~as defined in~~ for purposes of paragraph  
29 "a", subparagraph (1), if any person that has substantial nexus  
30 in this state, other than a person acting in its capacity as a  
31 common carrier, does any of the following:

32 Sec. 3. CONTINGENT EFFECTIVE DATE.

33 1. This Act takes effect on the later of July 1, 2018,  
34 or the first day of the first calendar quarter following the  
35 date that the United States supreme court issues an opinion

1 or that federal legislation takes effect which abrogates the  
2 physical presence requirement of Quill v. North Dakota, 504  
3 U.S. 298 (1992), or which otherwise confirms that a state  
4 may constitutionally impose its sales or use tax upon an  
5 out-of-state seller in circumstances similar to those enacted  
6 in this Act.

7 2. The director of revenue shall notify the Code editor if  
8 the contingency in subsection 1 occurs.

9 EXPLANATION

10 The inclusion of this explanation does not constitute agreement with  
11 the explanation's substance by the members of the general assembly.

12 This bill relates to the collection of sales and use taxes  
13 by certain out-of-state retailers. A retailer making taxable  
14 sales in Iowa is required to collect sales tax. For sales made  
15 outside Iowa but subject to the use tax, Iowa law requires  
16 retailers maintaining a place of business in this state to  
17 collect and remit the use tax.

18 Currently, as defined in Code section 423.1, the term  
19 "retailer maintaining a place of business in this state"  
20 includes retailers that have in Iowa certain physical places  
21 of business or representatives operating under the authority  
22 of the retailer, and includes a presumption that a retailer is  
23 maintaining a place of business in Iowa when any person who has  
24 substantial nexus in Iowa meets certain conditions or performs  
25 certain acts associated with the retailer.

26 The bill amends the definition of "retailer maintaining  
27 a place of business in this state" to also include retailers  
28 who do not meet the requirements listed above, but who do have  
29 gross revenue from the sale of tangible personal property  
30 or services delivered into Iowa in excess of \$100,000 for  
31 the current or previous calendar year, or who sell tangible  
32 personal property or services for delivery into Iowa in 200 or  
33 more separate transactions in the current or previous calendar  
34 year.

35 The bill takes effect on the later of July 1, 2018, or the

1 first day of the first quarter following the date that the  
2 United States supreme court issues an opinion or that federal  
3 legislation takes effect which abrogates the physical presence  
4 requirement of Quill v. North Dakota, 504 U.S. 298 (1992), or  
5 otherwise confirms that a state may constitutionally impose its  
6 sales or use tax upon an out-of-state seller in circumstances  
7 similar to those in the bill. In Quill, the United States  
8 supreme court held it is a violation of the commerce clause  
9 of the United States Constitution for a state to require an  
10 out-of-state seller to collect a state's sales or use tax if  
11 the seller does not have a physical presence in that state.  
12 Because Congress has the power to regulate interstate commerce,  
13 it has the power to modify or abrogate the holding of Quill  
14 through legislation.

15 The bill requires the director of revenue to notify the Iowa  
16 Code editor when the contingency is satisfied.